

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit: 1612

Application Serial. No. 09/933,709

In re Application of:
Morris et al.

Filing Date: August 22, 2001

Examiner: Gollamudi Kishore

VITAMIN POWDER
COMPOSITIONS

Confirmation No: 6249

VIA ELECTRONIC FILING

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDED APPEAL BRIEF

**REPLACEMENT SECTION FOR
SUMMARY OF CLAIMED SUBJECT MATTER**

Assignee of the entire right, title, and interest ("Applicant") in and to the above-referenced patent application ("Subject Application") submits this amended appeal brief containing a replacement section for the section entitled "Summary of Claimed Subject Matter" in accordance with the provisions of 37 C.F.R. § 41.37(c)(1)(v) and M.P.E.P. § 1205.03 and in response to (1) the Notification of Non-Compliant Appeal Brief mailed May 8, 2009 (the "Notification") and (2) the Appeal Brief filed on August 1, 2008 (the "Appeal Brief"). The Commissioner is hereby authorized to charge Deposit Account No. 11-1110 for any fees necessary for consideration of this brief and appeal.

REPLACEMENT SECTION:

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 18

Claim 18 relates to a free flowing composition. Among other things, claim 18 recites a redried cornstarch, silica, and at least one fat soluble vitamin. The redried cornstarch may include between about 5 to about 34 weight percent (See page 4, lines 7-13). The silica may have a particle size of between 40 and 50 microns (See page 4, line 29 to page 5, line 2). The fat soluble vitamin may include between 65 to 80 weight percent (See page 3, line 30 to page 4, line 4).

In addition to the foregoing, other various embodiments may be disclosed throughout the specification.

Claim 22

Claim 22 relates to a free flowing composition. Among other things, claim 22 recites a starch, silica, and at least one fat soluble vitamin. The starch may include between about 5 to about 34 weight percent (See page 4, lines 5-13). The silica may have a density of at least 12.5 lbs./cu.ft. (200 g/l), a particle size of between 40 and 50 microns, and a surface area of from about 400 m²/g to 500 m²/g (See page 4, line 29 to page 5, line 2). The fat soluble vitamin may include between 65 to 80 weight percent of at least one fat soluble vitamin (See page 3, line 30 to page 4, line 4).

In addition to the foregoing, other various embodiments may be disclosed throughout the specification.

Claim 26

Claim 26 relates to a free flowing composition. Among other things, claim 26 recites a starch, silica, and at least one fat soluble vitamin. The starch may include between about 5 to about 34 weight percent (See page 4, lines 5-13). The silica may have a particle size of between 40 and 50 microns (See page 4, line 29 to page 5, line 2). The fat soluble vitamin may include between 65 to 80 weight percent of at least one fat soluble vitamin (See page 3, line 30 to page 4, line 4). Further, the composition of claim 26 is free of fatty acid esters of glycerine (See col. 2, lines 40-54 in U.S. Patent 4,395,422 incorporated by reference in its entirety in the present application).

In addition to the foregoing, other various embodiments may be disclosed throughout the specification.

Claim 29

Claim 29 relates to a product produced by a process. Among other things, the process of claim 29 recites mixing a starch, silica, and liquid mixed tocopherols. The starch may include between about 5 to about 34 weight percent (See page 4, lines 5-13). The silica may have a particle size of between 40 and 50 microns (See page 4, line 29 to page 5, line 2). The liquid mixed tocopherols may include between 65 to 80 weight percent (See page 5, lines 7-10).

In addition to the foregoing, other various embodiments may be disclosed throughout the specification.

REMARKS

The above replacement section is being submitted in response to the Notification which objected to the Appeal Brief based on the provisions of 37 C.F.R. § 41.37(c)(1)(v). The Notification stated that "[t]he 'Summary of claimed subject matter' appearing on pages 2-4 of the Appeal Brief filed August 1, 2008 is deficient because it does not separately map independent claims 18, 22, 26, and 29 to the specification." In this regard, M.P.E.P. § 1205.03 instructs as follows:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice.

Accordingly, Appellants are providing only a replacement section for the section entitled "Summary of Claimed Subject Matter," which, Appellants respectfully submit, is in full compliance with the above referenced provisions of the C.F.R. and M.P.E.P.

Respectfully submitted,

May 27, 2009
Date

Sean M. Conrad
Sean M. Conrad
Patent Agent
Reg. No. 61,532

K&L GATES LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, Pennsylvania 15222-2312

412.355.6218
412.355.6500 (Fax)